

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEFFREY JON FRAZER,)	No. CV-06-037-CI
)	
Plaintiff,)	REPORT AND RECOMMENDATION TO
)	DENY PLAINTIFF'S MOTION TO
v.)	WITHDRAW CONSENT
)	
MAGGIE MILLER-STOUT, HAROLD)	
CLARKE, and PATRICK McCARTHY,)	
)	
Defendants.)	

BEFORE THE COURT is Plaintiff's Motion to Withdraw Consent to Proceed Before a United States Magistrate Judge. (Ct. Rec. 61.) Plaintiff is proceeding pro se; Assistant Attorney General Mary Catherine McLachlan represents Defendants. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 34.) However, in light of Plaintiff's Motion to withdraw that consent, this matter is addressed on Report and Recommendation.

Upon consent of the parties, a magistrate judge may conduct proceedings in a civil matter when designated to exercise such jurisdiction by the district court she serves. 28 U.S.C. 636(c)(1). On July 26, 2006, based on the signed consent of both parties to this action, Chief Judge Robert H. Whaley ordered the matter referred to a magistrate judge. (Ct. Rec. 34.) Although a party has no right to withdraw his consent to proceed before a magistrate judge, the court may vacate its reference to a magistrate judge if

1 the moving party shows "extraordinary circumstances." 28 U.S.C. §
2 636 (c)(4). *Dixon v. Ylst*, 990 F.2d 478, 4809 (1993). Plaintiff
3 states that he was unaware he had the option of proceeding before a
4 United States District Judge. (Ct. Rec. 61.) However, the Consent
5 to Proceed Before a United States Magistrate Judge signed by
6 Plaintiff clearly states, "[p]ursuant to 28 U.S.C. § 636(c), the
7 parties in the captioned matter waive their right to proceed before
8 a Judge of the United States District Court." (Ct. Rec. 34.)
9 Plaintiff has not shown "extraordinary circumstances" to warrant
10 vacating the district court's order of reference. Accordingly, **IT**
11 **IS RECOMMENDED** that Plaintiff's Motion to Withdraw Consent to
12 Proceed Before a United States Magistrate Judge be **DENIED**.

13 **OBJECTIONS**

14 Any party may object to a magistrate judge's proposed findings,
15 recommendations or report within ten (10) days following service
16 with a copy thereof. Such party shall file written objections with
17 the Clerk of the Court and serve objections on all parties,
18 specifically identifying any the portions to which objection is
19 being made, and the basis therefor. Any response to the objection
20 shall be filed within ten (10) days after receipt of the objection.
21 Attention is directed to FED. R. CIV. P. 6(e), which adds another
22 three (3) days from the date of mailing if service is by mail.

23 A district judge will make a de novo determination of those
24 portions to which objection is made and may accept, reject, or
25 modify the magistrate judge's determination. The judge need not
26 conduct a new hearing or hear arguments and may consider the
27 magistrate judge's record and make an independent determination
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1 thereon. The judge may, but is not required to, accept or consider
2 additional evidence, or may recommit the matter to the magistrate
3 judge with instructions. *U.S. v. Howell*, 231 F.3d 615, 621 (9th Cir.
4 2000); 28 U.S.C. § 636(b)(1)(B) and (C), FED. R. CIV. P. 73; LMR 4,
5 Local Rules for the Eastern District of Washington.

6 A magistrate judge's recommendation cannot be appealed to a
7 court of appeals; only the district judge's order or judgment can be
8 appealed.

9 The Clerk of the Court is directed to file this Report and
10 Recommendation and provide copies to Petitioner and counsel for
11 Respondent and the referring district judge.

12 DATED November 29, 2006.

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14 S/ CYNTHIA IMBROGNO
15 UNITED STATES MAGISTRATE JUDGE
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